

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

LINDA ANN SMITH,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL  
SECURITY ADMINISTRATION,

Defendant.

Case No. 2:13-cv-00347-GMN-CWH

**ORDER**

This matter was referred to the undersigned Magistrate Judge on Plaintiff's Motion/Application for Leave to Proceed *In Forma Pauperis* (#1), filed on February 28, 2013.

**I. In Forma Pauperis Application**

Plaintiff has submitted the affidavit required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed in forma pauperis will be granted.

**II. Screening the Complaint**

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen the complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for

1 failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is essentially a  
2 ruling on a question of law. *North Star Intern. v. Arizona Corp. Comm'n*, 720 F.2d 578, 580 (9th Cir.  
3 1983). In considering whether the plaintiff has stated a claim upon which relief can be granted, all  
4 material allegations in the complaint are accepted as true and are to be construed in the light most  
5 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980).

6 Plaintiff's complaint challenges a decision by the Social Security Administration ("SSA")  
7 denying benefits. Prior to filing suit, a plaintiff must exhaust administrative remedies. *See* 42 U.S.C.  
8 § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam) ("Section  
9 405(g) provides that a civil action may be brought only after (1) the claimant has been party to a hearing  
10 held by the Secretary, and (2) the Secretary has made a final decision on the claim"). Generally, if the  
11 SSA denies a claimant's application for disability benefits, he can request reconsideration of the  
12 decision. If the claim is denied at the reconsideration level, a claimant may request a hearing before an  
13 Administrative Law Judge ("ALJ"). If the ALJ denies the claim, a claimant may request review of the  
14 decision by the Appeals Council. If the Appeals Council declines to review the ALJ's decision, a  
15 claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

16 Once a plaintiff has exhausted administrative remedies, she can obtain judicial review of an  
17 SSA decision denying benefits by filing suit within sixty (60) days after notice of a final decision. *Id.*  
18 An action for judicial review of a determination by the SSA must be brought "in the district court of the  
19 United States for the judicial district in which the plaintiff resides." *Id.* The complaint should state the  
20 nature of Plaintiff's disability, when Plaintiff claims she became disabled, and when and how she  
21 exhausted his administrative remedies. The Complaint should also contain a plain, short, and concise  
22 statement identifying the nature of Plaintiff's disagreement with the determination made by the Social  
23 Security Administration and show that Plaintiff is entitled to relief. A district court can affirm, modify,  
24 reverse, or remand a decision if Plaintiff has exhausted her administrative remedies and timely filed a  
25 civil action. However, judicial review of the Commissioner's decision to deny benefits is limited to  
26 determining: (a) whether there is substantial evidence in the record as a whole to support the findings of  
27 the Commissioner; and (b) whether the correct legal standards were applied. *Morgan v. Commissioner*  
28 *of the Social Security Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

1 The Court finds that Plaintiff failed to allege sufficient facts to determine if she exhausted her  
2 administrative remedies and timely filed this action. Plaintiff did not attach a copy of the Appeals  
3 Council's decision. As a result, the Court is unable to determine when the Appeals Counsel denied her  
4 request for review and at which time the ALJ's decision became the final decision of the  
5 Commissioner. More importantly, the Court is unable to verify that Plaintiff filed this action within  
6 sixty (60) days after notice of a final decision. Because Plaintiff has not provided sufficient factual  
7 support for her claim, the complaint must be dismissed. The dismissal will be without prejudice to  
8 Plaintiff and she may amend her complaint to include sufficient factual allegations to support her claim.

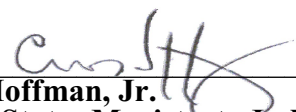
9 Based on the foregoing and good cause appearing therefore,

10 **IT IS HEREBY ORDERED** that Plaintiff's Motion/Application for Leave to Proceed *In*  
11 *Forma Pauperis* (#1) is **granted**. Plaintiff shall not be required to pay the filing fee of three hundred  
12 fifty dollars (\$350.00). Plaintiff is permitted to maintain this action to conclusion without the necessity  
13 of prepayment of any additional fees or costs or the giving of a security therefor. This Order granting  
14 leave to proceed *in forma pauperis* shall not extend to the issuance of subpoenas at government  
15 expense.

16 **IT IS FURTHER ORDERED** that the Clerk of the Court shall file Plaintiff's Complaint.

17 **IT IS FURTHER ORDERED** that the Complaint is **dismissed without prejudice** for failure  
18 to state a claim upon which relief can be granted, with leave to amend. Plaintiff shall have **thirty (30)**  
19 days from the date that this Order is entered to file an amended complaint correcting the noted  
20 deficiencies. Failure to comply with this Order may result in the Court recommending that this action  
21 be dismissed.

22 Dated this 4th day of March, 2013

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26 C.W. Hoffman, Jr.  
27 United States Magistrate Judge  
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